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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,839	05/11/2001	Marcio Cravo de Almeida	12971-002001	6450
26161	7590	11/24/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			NEURAUTER, GEORGE C	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/853,839

Applicant(s)

CRAVO DE ALMEIDA ET AL.

Examiner

George C. Neurauter, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

Claims 19-44 are currently presented and have been examined.

It is noted that a new Examiner has been assigned to this case. Any future correspondence should be directed to the Examiner listed below.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 August 2006 has been entered.

***Response to Arguments***

Applicant's arguments filed 18 August 2006 have been fully considered but they are not persuasive.

The Applicant appears to argue that Menard does not disclose or teach writing data to a file on a remote computer. The Examiner does not agree. As previously noted by the previous Examiner, a client "collects" data (see paragraph 0013 of Menard). Therefore, as the data is collected by the client, it

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is stored and collected in a collection of data known as a "file". Therefore, Menard does disclose this limitation.

The Applicant also argues that Ulmer does not teach or disclose receiving data at time intervals independent of data collection times. This limitation is not given any patentable weight since the limitation does not positively recite what data collection times are meant to be independent of the automatic and repeated receiving of data. Therefore, since no other data collection times are positively recited and since Ulmer discloses automatically and repeatedly receiving data such as electronic mail messages, the claims are silent with respect to these data collection times and therefore do not require this limitation and are further considered to be inherently independent from the positively recited collection of data. Therefore, Ulmer does disclose this limitation. The Examiner maintains the rejections made by the previous Examiner.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point

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out and distinctly claim the subject matter which applicant regards as the invention.

Claims 19 and 32 recite "automatically and repeatedly receiving data at time intervals independent of data collection times". It is not clear which "data collection times" are referred to and, further, this limitation does not have proper antecedent basis within the claim. The claim is also not clear as to what data is collected in this context and which element performs the collecting.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-20 and 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,949,976 to Chappelle.

Regarding claim 19, Chappelle discloses a method comprising, using a computer,

(a) automatically and repeatedly receiving data at time intervals independent of data collection times (column 8, lines 61-65; column 11, lines 34-44), the data having been collected

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by a remote computer indicative of a performance of the remote computer (column 3, lines 25-28), the data having been written to a file on the remote computer (column 7, lines 19-24; column 8, lines 46-52), and

(b) automatically analyzing the information to determine the performance of the remote computer. (column 1, lines 43-51; column 8, lines 31-40)

Regarding claim 20, Chappelle discloses the method of claim 19 in which receiving data comprises:

receiving electronic mail messages, and extracting the information from the electronic mail messages (column 3, lines 16-18 and 25-28; column 8, lines 56-58; column 9, lines 8-10; column 11, lines 34-50).

Claims 32 and 33 are also rejected since these claims recite substantially the same limitations as recited in claims 19 and 20.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 19-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of US Patent Pub. US

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2001/0027470 A1 to Ulmer and US Patent Pub. US 2002/0173997 A1 to Menard.

Regarding Claims 19 & 32, Ulmer discloses a method and computer readable medium comprising:

automatically and repeatedly receiving data at time intervals independent of data collection times, that include information related to remotely collected data indicative of a performance of a machine, the electronic mail messages complying with a standard electronic mail messaging protocol, (paragraphs #0036-0038, 0040, 0056, 0059, 0063-0073 & 0097), and automatically analyzing the information to determine the performance of the machine, (paragraph #0036).

Though Ulmer clearly discloses the remote collection and analysis of data related to the performance of a machine, Ulmer does not specifically teach the collection and analysis of data by a remote computer, which data is indicative of the performance of the particular remote machine collecting the data. Menard clearly teaches a collection/analysis system, embedded upon the client, which system collects and transmits client-based data to a remotely located management server for analysis of the same, the data having been written to a file on the remote computer (Menard - paragraphs #0010-0017).



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It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to incorporate the collection & threshold analysis system from Menard into the remote support service system of Ulmer as a new means by which to improve business performance and increase reliability within a geographically distributed system, (Menard - paragraph #0002-0009). Specifically, Examiner notes that both systems gather, transmit, analyze and report remote system performance information wherein various analysis techniques would have been obvious to incorporate therein or combine therewith. Therefore,

Claims 19 & 32 are found to be unpatentable over the combined teachings of Ulmer and Menard.

Regarding Claims 20 & 33, the teachings of Ulmer and Menard are relied upon as disclosed herein. As noted above, Ulmer discloses the capture and transmission of performance information, (paragraph #0036), via email, (paragraph #0038) to the support-service provider. Ulmer does not specifically indicate the analysis component extracting the information exclusively from the electronic mail messages; however, it would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to extract information from any remote customer transmission for analysis purposes at the support-service provider's site within a system dedicated to

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providing remote support services wherein any information transmitted from the remote customer could obviously be relevant and necessary to proper system performance analysis.

Therefore, Claims 20 & 33 are found to be unpatentable over the combined teachings of Ulmer and Menard.

Regarding Claims 21, 26, 28-31, 34, 39 & 41-44, the teachings of Ulmer and Menard are relied upon as disclosed herein. Ulmer further discloses a graphical display, (per pending Claims 30 & 43), (paragraph #0059) and generating a [English language] report based on the analysis, (per pending Claims 21, 26, 34 & 39), (paragraph #0003, 0059, 0097 & 0101), wherein said report would obviously need to be in a maximally universally understood language, (i.e.: English), for comprehension by the greatest amount of individuals. Additionally, the use of language enhancements, (per pending Claims 28, 29, 41 & 42), and hyperlinks, (per pending Claims 31 & 44), in word processing and email programs is well-known in the art as an obvious means of accessing and emphasizing matter within written instruments, wherein the use of bold, italicized, colored, underlined and various font size typeface and links to other web pages/databases is not patentably distinct, (please see McGregor '360 noted herein below). Therefore, Claims 21, 26,

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28-31, 34, 39 & 41-44 are found to be unpatentable over the combined teachings of Ulmer and Menard.

Regarding Claims 22 & 35, the teachings of Ulmer and Menard are relied upon as disclosed herein. Ulmer further discloses generating an electronic mail message that includes the report and transmitting the electronic mail message over a network, (paragraph #0038). Therefore, Claims 22 & 35 are found to be unpatentable over the combined teachings of Ulmer and Menard.

Regarding Claims 23-25, 27, 36-38 & 40, the teachings of Ulmer and Menard are relied upon as disclosed herein. Menard clearly teaches analysis of data based on a threshold comparison, (per pending Claims 23, 25, 36 & 38), (Menard - Abstract, paragraphs #0010-0017 & 0057-0059), and performance reports obviously inclusive of performance-based information, (i.e.: threshold/measurement value) (per pending Claims 24, 25, 27, 37, 38 & 40), (Menard - paragraphs #0013, 0037 & 0057), and wherein analyzing and selecting from the collected data obviously includes determining the number of performance measurements that are within the range of acceptable values, (per pending Claims 25 & 38), (Menard - paragraph #0057).

Therefore, Claims 23-25, 27, 36-38 & 40 are found to be unpatentable over the combined teachings of Ulmer and Menard.

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**Conclusion**

It is noted that the column, line, and/or page number citations used in the prior art references as applied by the Examiner to the claimed invention are for the convenience of the Applicant to represent the relevant teachings of the prior art. The prior art references may contain further teachings and/or suggestions that may further distinguish the citations applied to the claims, therefore, the Applicant should consider the entirety of these prior art references during the process of responding to this Office Action. It is further noted that any alternative and nonpreferred embodiments as taught and/or suggested within the prior art references also constitute prior art and the prior art references may be relied upon for all the teachings would have reasonably suggested to one of ordinary skill in the art. See MPEP 2123.

The prior art listed in the PTO-892 form included with this Office Action disclose methods, systems, and apparatus similar to those claimed and recited in the specification. The Examiner has cited these references to evidence the level and/or knowledge of one of ordinary skill in the art at the time the invention was made, to provide support for universal facts and the technical reasoning for the rejections made in this Office Action including the Examiner's broadest reasonable

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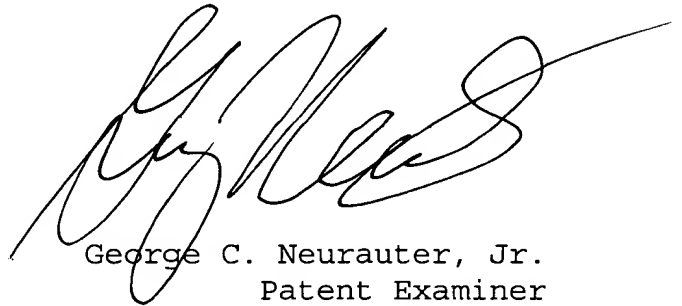
interpretation of the claims as required by MPEP 2111 and to evidence the plain meaning of any terms not defined in the specification that are interpreted by the Examiner in accordance with MPEP 2111.01. The Applicant should consider these cited references when preparing a response to this Office Action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is 571-272-3918. The examiner can normally be reached on Monday-Friday 10am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "George C. Neurauter, Jr.", is positioned above the printed name.

George C. Neurauter, Jr.  
Patent Examiner  
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